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05/27/2010

EXAMINER

MOSSER, ROBERT E

ART UNIT

PAPER NUMBER

3714

NOTIFICATION DATE

DELIVERY MODE

05/27/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### **Notice of Non-responsive Amendment**

Newly submitted claims 55-90 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claimed invention as originally presented and examined was broadly directed to a symbol bearing display device incorporating the display elements, which as further claimed in dependent claims are defined to include symbol rotation, illumination, LCD, OLED type display technologies and associated capabilities of the preceding elements. The newly presented claims of February 19<sup>th</sup>, 2010 however present a display structure similar to the display structure paraphrased above and further in addition thereto incorporate a processor and memory device specifically programmed to perform a particular mode of operation including the receipt of a wager, causing a display device display a plurality of symbols, temporarily rotate the first display device, illuminate the symbols on the display device with an illumination device, and award a prize based on the symbols shown the display device. The original presented invention did not address the particular claimed mode of operation and could have been utilized with various known particular game methods including non-wager game play. However the product and method as defined in the claims of February 19<sup>th</sup>, 2010, commonly require the placement of a wager included with the various other program method steps recited above and therefore include the incorporation differing modes of operation and functions, which resultant thereof define a separate claimed invention that was not originally presented.

The inventions are independent or distinct, each from the other because:

The invention of the originally presented claims and the invention of claims dated February 19<sup>th</sup>, 2010 are directed to related products. The related inventions are distinct if: (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed can have a materially different design, mode of operation, and/or function as set forth above. . Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 55-90 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on February 19<sup>th</sup>, 2010 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because of the reason presented above.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the

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omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

The applicant's arguments of February 19<sup>th</sup>, 2010 challenging the holding of distinct inventions are respectfully non-persuasive. Specifically the applicant argues that the invention of the newly presented claims recognizes different claim elements then previously claimed in canceled claims 18 to 54 (last paragraph of page 21 of the applicant's remarks dated 2/19/2010), and further the a processor programmed to perform various steps could not be considered intended use but instead defines a separate and particular structure rather then for instance intended use of processor (Applicant's remarks pages 22-25). Both of the applicant's arguments cited above lend in establishing a distinction between the newly claimed invention of claims 55 through 90 and the originally presented and examined claimed invention of claims 18 through 54. Accordingly as the distinction between the originally presented claims 18-54 and the newly presented claims 55-90 is preserved, the holding of non-responsive amendment is maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MOSSER whose telephone number is (571)272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on (571) 272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Supervisory Patent Examiner, Art  
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